

### **Remarks/Arguments**

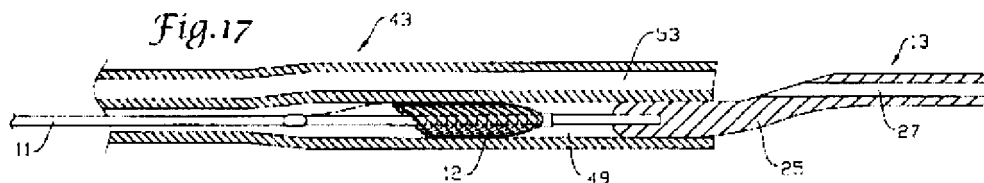
Applicants have received and carefully reviewed the Office Action of the Examiner mailed December 3, 2008. Currently, claims 1-28 and 31-46 remain pending of which claims 17-21 and 38-43 were previously withdrawn. Claims 1-16, 22-28, 31-37, and 44-46 have been rejected. Favorable consideration of the following remarks is respectfully requested.

### **Claim Rejections – 35 USC § 112**

Claims 1-16, 22-28, 31-37, and 44-46 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner has asserted that the limitation found in independent claims 1 and 37 currently in question:

“wherein, when the embolic protection filter is collapsed in part within the distal sheath, a portion of the guidewire within the second lumen of the elongated tubular member adjacent the distal port of the second lumen is generally coplanar with a portion of the guidewire within the guidewire lumen of the guide tip, a portion of the elongated wire within the first lumen of the elongated tubular member adjacent the distal end of the first lumen, and the point of attachment of the elongated wire to the guide tip”

implies that the second lumen (53) of the elongated tubular member (43) is generally coplanar with the following elements: guidewire lumen (27) of the guide tip (13); the first lumen (49) of the elongated tubular member (43); and the point of attachment of the elongated wire (11) and the guide tip (13) and that the limitation is not supported in the originally filed specification. The Examiner has thoughtfully provided a reproduction of Figure 17 along with his assertion that the second lumen is not generally coplanar with the first lumen of the elongated tubular member or the point of attachment of the elongated wire to the guide tip. Applicants must respectfully disagree and point to the plane of the drawing in support of their position. Second lumen (53), first lumen (49), the point of attachment between elongated wire (11) and the guide tip (13), as well as guidewire lumen (27) of guide tip (13) certainly are coplanar and lie within the plane of cross-sectional Fig. 17 reproduced below.



Applicants believe that the figure alone provides sufficient support for the claimed limitation; however the text at page 20, lines 12-15 provides additional support by indicating that second lumen (53) of elongated tubular member (43) may, if necessary, be aligned to achieve the coplanar arrangement depicted in Fig. 17 which allows the guidewire, when present, to pass from the second lumen of the elongated tubular member to the guidewire lumen of the guide tip as illustrated admirably by the Examiner's upper dashed line which parallels the lower dashed line in the first lumen of the elongated tubular member. Accordingly, Applicants respectfully request that the 35 U.S.C. 112, first paragraph rejection of claims 1-16, 22-28, 31-37, and 44-46 be withdrawn.

Claims 1-16, 22-28, 31-37, and 44-46 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claims 1 and 37 to further prosecution of this case. As such, this rejection is considered moot.

In view of the foregoing, all pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Date:

Feb. 24, 2009

Respectfully submitted,

Glenn M. Seager, Reg. No. 36,926  
CROMPTON, SEAGER & TUFTE, LLC  
1221 Nicollet Avenue, Suite 800  
Minneapolis, Minnesota 55403-2420  
Tel: (612) 677-9050